

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

APPLICANT: Brian R. Harris, Jr.
FILING DATE: October 16, 2003
TITLE: TISSUE GRASPER
APPLICATION NO.: 10/687,152
EXAMINER: Elizabeth Houston
ART UNIT: 3731
ATTORNEY DOCKET NO.: 702.125

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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Applicant responds as follows to restriction requirement set forth in the Office Action mailed July 26, 2006.

The Examiner requires restriction between Invention I (claims 1-11) and Invention II (claims 12-25). Applicant traverses the restriction requirement, and provisionally elects Invention I (claims 1-11).

Applicant traverses the restriction requirement on grounds that the Commissioner has not met its burden of establishing a prima facie basis as to why Invention I and Invention II are independent and distinct. The Examiner bases restriction solely on the following position: "In the instant case the product can be used in a materially different process such as cutting and removing tissue for a biopsy." It is important to note that instrument claims 1-11 and method claims 12-25 are both specifically drawn to a tissue grasping instrument having first and second jaws for gripping tissue, with one of the jaws having a hole therethrough. Claims 1-11 claim the

instrument, and claims 12-25 claim a method of using the instrument. The Examiner does not explain how the tissue grasping instrument as claimed could be used for "cutting and removing tissue for a biopsy." It is unclear to applicant which feature of the claimed instrument would enable this function. If the claimed instrument could somehow be used for this function, it is unclear why cutting and removing tissue would be a materially different process from the claimed method of grasping tissue and inserting a suture through the tissue.

Based on the information known to applicant, applicant respectfully submits that the Commissioner has not established that the inventions of claims 1-11 and 12-25 have acquired a separate classification or status in the art. Applicant agrees that claims 1-11 are properly classified in class 606, subclass 205. However, applicant does not understand the conclusion that Claims 12-25 would not also be classified in class 606, subclass 205. Class 606, subclass 205 is entitled "Forceps" and is defined as "Subject matter provided with pivoted arms carrying cooperating, contacting members for grasping parts of the body, articles within the body, or devices associated with body treatment." Since claims 12-25 are drawn to a method of grasping tissue using an instrument having jaws, it seems clear that claims 12-25 should also be classified in class 606, subclass 205. Accordingly, it is respectfully suggested that the Patent Office has not met its burden of establishing a prima facie basis as to why Invention I and Invention II are independent and distinct.

It is believed that this response has been filed within the applicable time period for responding and that no extension of time is therefore required, but if an extension is required, applicant hereby requests an appropriate extension of time. It is further believed that no fees are due, but if any fees or credits are due, the Commissioner is authorized to charge or deposit them to Deposit Account No. 502795.

Respectfully submitted,

/Shawn D. Sentilles/

Shawn D. Sentilles, Reg. No. 38,299
WRIGHT MEDICAL TECHNOLOGY, INC.
(USPTO Customer No. 37902)
5677 Airline Road
Arlington, TN 38002
Telephone: 901-867-4314